IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1350 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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JOGESHWAR HIRALAL - Appellant(s)
Versus
CHANDULAL CHHOTALAL & 2 - Defendant(s)

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Appearance :
MR AP MEDH for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 30/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal (No.2), Ahmedabad passed in M.A.C.P. No. 122 of 1980 dated 23.09.1981 whereby the Tribunal dismissed the said petition.

2.0 The brief facts of the case that on 6th April, 1980, when the deceased-Premchand was proceeding on scooter, he met with an accident

with a bus driven by present opponent No.1 and owned by present opponent No.2. On account of the said accident, Premchand sustained severe bodily injuries and expired. Therefore, the present appellant being heir and legal representative of the deceased filed a petition claiming an amount of Rs.50,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Heard learned Counsel for the appellant. Though, served none appears on behalf of the opponents. It was the case of the appellant before the Tribunal that, since the deceased lost his life on account of the negligence on the part of the opponent No.1, he is entitled for compensation. However, the story put forward by the appellant is controverted by opponent No.1. According to him on the day of incident he was

coming from Pushpakunj side i.e. from the western side and he wanted to go towards Maninagar i.e. to the southern side after taking a round of the traffic circle and at that time he saw the deceased was coming from wrong side taking a short cut. He has further stated that on seeing the deceased, though, he had applied the brakes, the deceased collided with the bus. The story narrated by the opponent No.1 is supported by the 'Panchnama' of the place of incident wherein it has been stated that the brake marks of the bus are found and the bus stopped at 38 feet from the Tourist Coach Centre and was 24' feet away from the Balvatika which clearly leads to the conclusion that opponent No.1 had not taken any sharp turn of the traffic circle and was on the correct side of the road. Even, from the evidence of the witnesses examined by the appellant, it clearly transpires that the deceased came from wrong side and collided with the bus driven by opponent No.1. The Tribunal, therefore, was justified in coming to the

conclusion that, since the deceased himself was solely responsible for the accident, the appellant is not entitled for compensation. I am in complete agreement with the reasoning adopted and findings arrived at by the Tribunal, and hence, find no reason to interfere in this appeal.

4.0 In the result, the appeal stands dismissed. No order as to costs.

(K.S. Jhaveri,J.)

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